

UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF MICHIGAN



OFFICE OF THE CLERK
BILL OF COSTS HANDBOOK

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I. TAXATION OF COSTS BY THE CLERK

INTRODUCTION

Costs shall be taxed by the clerk pursuant to Rule 54(d)(1), Federal Rules of Civil Procedure. Not every expense of litigation, however, is recoverable.

This handbook has been prepared to assist counsel in the preparation of bills of cost. We encourage litigants to review it thoroughly. Section II should prove especially valuable.

When a judgment is entered for a party in this court, it may merely state that the party recover a sum certain with costs. These costs are not itemized at this point. If counsel are unable to agree as to the amount of costs, it will be the duty of the Clerk, or the Clerk's designee, to tax all allowable costs to be included in the judgment upon the filing of a proper request for taxation of costs.

Before any bill of costs is taxed, it must be submitted on the proper form. A party claiming any item of costs of disbursement shall attach thereto an affidavit, made by himself or by his duly authorized attorney or agent having knowledge of the facts, that such item is correct and has been necessarily incurred in the case and that the services for which fees have been charged were actually and necessarily performed.

Forms may be obtained from the **Office of the Clerk**, and a sample is included for your reference. The form contains the necessary affidavit. **It is counsel's responsibility** to serve opposing counsel, provide the court with a certificate of service and attach a separate itemization and the documentation to support the claims made. Documentation may include receipts, orders and stipulations of the parties. Please be advised that counsel must ensure that any receipts are self-explanatory (i.e., receipts for service shall include the names of the individuals, why they were served, where they were served, and the cost for service). Claims for docket fees under 28 U.S.C. §1923 shall be broken down by fee. ***The taxation clerk will disallow any expenses that do not have this supporting information.***

The original and two copies of the bill of costs should be filed in the clerk's office, in the appropriate place of holding court. After the taxation clerk has taxed costs, counsel for either side may, within five (5) days, file a motion to review the action of the taxation clerk and request review by the court. Once the court has ruled on the motion filed by any parties, and the matter of costs has been determined, those costs are included in the judgment and should be paid directly to the prevailing party. These costs are not processed through the Office of the Clerk. To record the payment, you may file a notice of satisfaction of costs.

The taxation clerk will tax costs even if the case is appealed, unless a stay pending appeal has been granted by the court. However, if all parties prefer to postpone the taxation proceeding until the conclusion of all appellate proceedings, the taxation clerk should be advised in writing. ***Counsel will be responsible to advise the taxation clerk at the conclusion of all appellate proceedings that costs may be taxed.***

II. DISCUSSION OF TAXABLE COSTS

The taxation clerk will review and tax costs in the following categories. **Counsel is responsible** for providing the required receipts, orders, stipulations or other documentation to support their bill of cost. The taxation clerk **will deny** costs without supporting documentation.

A. FEES OF THE CLERK

1. Taxable

- a. Filing fee of complaint, removal and habeas corpus petitions.
- b. Fee charged by out of district federal courts for filing notice of taking deposition.
- c. Docket fees pursuant to 28 U.S.C. §1923.
- d. Appellate fees pursuant to FRAP 39(e).
- e. An amount equal to the civil filing fee may be awarded to the United States when a judgment has been awarded in their favor.

**Counsel is instructed to itemize the costs claimed in this category.*

***Effective 12/18/96, the civil filing fee was increased from \$120.00 to \$150.00.*

B. FEES OF THE COURT REPORTER FOR ALL OR ANY PART OF THE TRANSCRIPT NECESSARILY OBTAINED FOR USE IN THE CASE

Counsel is directed to attach to the bill of costs, a copy of the court's order directing preparation of transcript or the stipulation of parties agreeing to its preparation, if applicable. If transcript was used in support of a motion, counsel is required to provide the taxation clerk with the title of the motion and the approximate date it was filed. If transcript was used at trial, the date the transcript was read into the record is to be noted on the supporting documentation.

1. Taxable

- a. Transcript procured at direction of the court.
- b. Transcript ordered for appeal purposes.
- c. Transcript prepared pursuant to stipulation of parties with agreement to tax as costs.
- d. Transcript used at trial to impeach witness(es).

- e. Transcript used in support of a motion.
- f. Court reporter fees for attendance and travel for depositions.

****The cost of the transcript and one copy will be allowed, if the transcript falls into categories b-e listed above.***

*****Filing of all deposition material shall be only in written form. If audiotaped or videotaped, a written transcript will be accepted for filing. (Local Rule 26.2(c))***

******It is the responsibility of counsel to ensure that the transcript is properly filed with the court.***

2. Not Taxable

- a. Cost of daily or expedited copy produced solely for the convenience of counsel.
- b. Transcript used primarily for trial preparation or discovery.

C. FEES FOR WITNESSES

If a witness is subpoenaed to the trial, but does not testify, or if a witness is deposed, but the transcript is not used at trial or in support of a motion, the taxation clerk **will not** tax the fees and disbursements as to that witness.

1. Taxable

- a. Attendance, mileage and subsistence fees, if applicable. These costs are taxable only for the day(s) a witness testifies.
- b. Federal employees are **not** entitled to attendance fees, **but** may receive the mileage and subsistence allowance for overnight stays.
- c. Miscellaneous toll charges, taxicab fares between places of lodging and carrier terminals and parking fees.
- d. Common carrier fees at the most economical rate.

Effective 1991, Rule 45(b)(2) of the Federal Rules of Civil Procedure, was amended to provide that "a subpoena may be served at any place within the district of the court by which it is issued, or at any place without the district that is within 100 miles of the place of the deposition, hearing, trial, production or inspection specified in the subpoena. . ."

Between 8/1/85 and 1991, FRCP 45(d)(2) provided that a person may be required to attend a deposition at any place within one hundred (100) miles from the place where that person resides, is employed or transacts business in person, or is served, etc.

****The attendance fee is currently taxed at \$40.00 per day. Prior to January 1991, the attendance fee was taxed at \$30.00 per day.***

The mileage fee for use of a privately used automobile is:

As of 1/1/03	\$.36
From 1/21/02 to 12/31/02	\$.365
From 1/22/01 to 1/20/02	\$.345
From 1/14/00 to 1/21/01	\$.325
From 4/1/99 to 1/13/00	\$.31
From 9/8/98 to 3/31/99	\$.325
From 6/7/96 to 9/7/98	\$.31
From 1/1/95 to 6/6/96	\$.30
From 6/30/91 to 12/31/94	\$.25
From 9/17/89 to 6/29/91	\$.24
From 8/14/88 to 9/16/89	\$.225

2. Not Taxable

- a. The expenses of witnesses who are themselves parties to the case.
(10 Wright, Miller and Kane, Federal Practice and Procedure, Civil 2d §2678 at 376 (2d Ed. 1983)).
- b. Compensation paid to an **expert** witness **in excess** of the statutory fees.

D. FEES FOR SERVICE OF SUMMONS AND SUBPOENA

1. Taxable

- a. Service fees for summons and other initial process.
- b. Service fees for trial subpoenas for witnesses who **have** testified at trial.
- c. Service fees for deposition subpoenas of which the deposition transcript has been taxed as costs.
- d. Cost of postage if service is executed by mail. (FRCP 4(c)(2)(a))
- e. United States Marshal fees pursuant to 28 U.S.C. §1921.

***Service fees must be documented on the returned summons or subpoena and provided as an attachment to the bill of costs.**

2. Not Taxable

- a. Service fees for discovery subpoenas.

- b. Service fees for trial subpoenas if the witness **did not** testify.

E. FEES AND DISBURSEMENTS FOR PRINTING

These fees and disbursements usually do not become involved in trial court proceedings. The court of appeals taxes these fees and disbursement and includes them in their mandate. These taxed costs are in addition to those recoverable in the trial court.

F. FEES FOR EXEMPLIFICATION AND COPIES OF PAPERS OBTAINED FOR USE IN THE CASE

The cost of securing translations for exemplification of matters before the court, copies of papers necessarily obtained for use in a case, and the cost of obtaining charts, models, photographs, etc., are **not** recoverable within the discretion of the taxation clerk **unless** counsel has previously secured an order authorizing the recovery of these costs. Routine copy expenses; those made for service, filing or for the convenience of counsel are **not** taxable within the discretion of the taxation clerk.

G. OTHER COSTS

1. Taxable

- a. Bond premiums.
- b. Interpreter fees upon order of the court.
- c. Video and audio tapes of depositions upon order of the court. *(See also Section B, Fees of the court reporter for any and all transcript necessarily obtained for use in the case).*

2. Not Taxable

- a. Attorney fees incurred in attending depositions, conferences and trial, as well as expenses incurred by investigations.
- b. Word processing and typing charges which are presumably incidental to attorney's services.
- c. Computerized legal research charges.
- d. Paralegal expenses.
- e. Prejudgment and post-judgment interest.
- f. Mediation fees.
- g. ASCII, CD-ROM or Optical discs produced for counsel.
- h. Fees for postage (other than summons/subpoenas), delivery and notary fees.